IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 6501 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

AJAY METAL INDUSTRY

VERSUS

UNION OF INDIA

Appearance:

MR MIHIR JOSHI for the Petitioners

MR ASHIM J PANDYA for the Respondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 27/04/2000

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. Learned counsel for the respondents relying on the Division Bench decision of this court in the case of G.P. Chovatia vs. Chief General Manager, Gujarat Telecom Circle reported in 1996 (1) GLR 413 raised a preliminary objection that this petition is not maintainable as the petitioner has efficacious alternative remedy as provided under section 7 (B) of the Indian Telegraph Act.

3. Learned counsel for the petitioner does not dispute this legal position. He submits that the petitioner will avail of this alternative remedy but the interim relief which has been granted by this court may be ordered to be continued till the decision made in this matter by the arbitrator. In support of his this prayer, learned counsel for the petitioner submitted that the respondents themselves have accepted that it is a case of misuse of telephone of the petitioner and the matter has been reported to the C.B.I., which is pending investigation.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. Interim relief has been granted in this case in terms of para-18-B on condition that the petitioner to deposit Rs.5000/- in respect of the disputed bill. This interim relief is continuing till date. Para-18-B reads as under:

> Pending admission hearing and final disposal of the petition, your Lordships be pleased to restrain the respondents, their officers and agents from disconnecting the telephone No.2125462 of the petitioners for alleged nonpayment of bill dated 5-2-1997 at annexure A hereto.

6. The Division Bench of this court in the case of G.P. Chovatia vs. Chief G.M., Gujarat Telecom Circle (supra) speaking through the Hon'ble Chief Justice B.N. Kirpal, (as he then was), considered this aspect and in para-9 thus held:

> 9. The learned single Judge was, therefore, right in coming to the conclusion that an adequate alternative remedy, under the Telegraphs Act by way of arbitration was available. In fact, due to the existence of Sec.7-B, even the jurisdiction of the Civil Courts under sec. 9 of the Code of Civil Procedure, would be

> regarded as impliedly ousted. Therefore, even a Civil suit challenging the correctness of the bills so raised would not be maintainable in a Civil Court. It is no doubt true that the interim order had been issued requiring the appellant-petitioner to pay only 25% of the bill to be paid. It is pertinent to note that now it has been held by a catena of decisions that the demand which has been raised by such tax authorities providing public facilities should not be lightly interfered with or stayed. The Court should rarely, if ever, interfere with the payment of the bills which are raised. Of course, if there is dispute with regard to the amount which is being demanded that dispute has to be decided in accordance with law but merely because a dispute is raised should be no ground to grant the stay of the demand. The proper exercise of the jurisdiction would be to see that the payment of the bill as demanded is made and if the grievance is upheld in Arbitration the excess amount paid can be adjusted in future bills and if need arises or the Court so determines, even the interest on the excess amount paid can be awarded. The public Corporation do not and cannot continue to function and provide the requisite services without due payments being made. Even the direction of providing bank guarantee in place of payment of tax is of no assistance because public Corporations cannot run merely on bank guarantees.

7. This matter is squarely covered by the Division Bench decision which is binding on me. In such matters as what the Division Bench said, no such interim relief can be continued by this court. If this contention of the petitioner is accepted then it will result in a position that first the parties will approach to this court for interim relief, this court will grant interim relief and then on the objection raised by the other side re: maintainability of the special civil application, the matter has to be dismissed and interim relief has to be continued as earlier the same has been granted. Once this court has considered that this petition is not maintainable on the ground of availability of alternative remedy, no such relief can be granted.

8. Learned counsel for the petitioner, during the course of arguments, also contended that this matter has

been admitted and now the petitioner may not be asked to go to the remedy under sec. 7-B of the Indian Telegraph Act. It is further contended that this petition has been admitted after notice to the respondents.

9. I do not find any substance in this contention. If this has been accepted then in all those petitions which are admitted, no such plea can be permitted. It is true that this matter has been admitted after notice to the respondents but they have not filed reply to the same before the petition has been admitted. Reply has been filed by them after admission of the petition in which this objection has been raised. If this contention of the learned counsel for the petitioner is accepted then those petitions in which alternative remedy was available and this was specifically held by the court in identical matters earlier, these petitions are to be entertained. It is in fact the duty of the petitioner's counsel to point out to the court the decision of the Division Bench. The petitioner's counsel has not made this position clear to the court and got the order of notice and admission and when the other side has pointed out to the court the Division Bench decision, it is contended that the petitioner may not be relegated to the alternative remedy as the matter has been admitted. If it is permitted then it will amount to giving of the benefits to the petitioner for its own act and conduct.

10. In the result, this special civil application fails only on the ground that the petitioner has alternative remedy in the matter and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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zgs/-